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November 28, 2001

SENT VIA FACSIMILE (916)978-5290 AND FIRST CLASS MAIL

Bureau of Reclamation
Attn: Alisha Sterud
MP-400
2800 Cottage Way
Sacramento, CA 95825

Re: Comments on the draft Municipal and Industrial (M&I) Water Shortage Policy [Draft dated 9/11/01]

Dear Ms. Sterud:

These comments on the Central Valley Project draft M&I Water Shortage Policy ("Policy") dated September 11, 2001 are submitted on behalf of the contractors who received CVP water through the Tehama-Colusa and Corning canals ("TC Contractors").

The TC Contractors are all CVP water service contractors, or subcontractors of the County of Colusa, which itself is a water service contractor. Substantially all of the water the TC Contractors deliver to their customers is used for agricultural purposes. Most of these water agencies have estimated a need for additional CVP surface water supplies within the next twenty-five years in excess of their current contract quantities. A few of the contractors have, in fact, already developed an immediate demand for CVP water in excess of their current quantities. Because Reclamation allocates shortages based on contract entitlement, rather than need or historic use, these contractors are especially impacted in water-short years.

2001 is a good example. The CVP water service contractors were allocated a 60% supply based on their contract entitlements. This provided some Tehama-Colusa contractors with less than 50% of their needs. Moreover, at this level of allocation, there is little water available for transfer between TC Contractors. CVP project water *was* available from Sacramento River Water Rights Settlement Contractors, but at a price that far exceeded TC Contractors' contract rates, and therefore limited the practical usefulness of such transfers.

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The Policy appears to offer a preference to the CVP's M&I Contractors while penalizing irrigation contractors. The TC Contractors have no objection to a policy that would protect public health and safety within the service areas of the M&I contractors. On the other hand, a policy that provides assurances in drought years of minimum supplies to M&I contractors, apparently resulting in concurrent additional shortages for the TC Contractors, is inappropriate. The Contractors are unaware of any legal justification for such a preference. For instance, when considering the priorities for use of CVP facilities in drafting the Central Valley Project Improvement Act, Congress left unchanged the equal priority of the use of those facilities for *both* irrigation and domestic uses, while adding fish and wildlife litigation to that priority. The Policy is especially ironic in light of Reclamation's position in the long-term contract renewal negotiations regarding contract water supplies for the TC Contractors. In those negotiations, Reclamation has consistently asserted that there is no additional CVP supply available to increase TC Contractors' entitlements above their current levels, notwithstanding that those levels were artificially fixed in many cases by the 1978 moratorium on contracting imposed by Secretary Cecil Andrus. Yet the Policy would provide guaranteed supplies based on an M&I contractor's CVP projected demand as of September 30, 1994. Presumably Reclamation's position on not increasing TC Contractors' CVP water entitlements is a result of a need to preserve water to meet the preferences of the Policy.

We have seen a copy of a draft *Urban Reliability Policy Impact Analysis* that Bookman-Edmonston Engineering prepared in June 1997. While the title and some of the substance of the Policy have changed since that analysis was prepared, it appears that the general impacts would still be the same. Under the Policy, CVP agricultural contractors north of the Delta would suffer significant additional shortages in dry and critically dry years while deliveries to CVP M&I contractors would be substantially increased.

We also note that neither the Policy nor the notice in the *Federal Register* published on October 30, 2001 mention analysis of the specifics of the Policy under the National Environmental Policy Act. We believe adoption of the Policy, particularly in light of the anticipated impacts on CVP irrigation contractors, is a major federal action that requires NEPA analysis. We do not believe that the cursory discussion of an M&I shortage policy in the CVPIA Final PEIS conveys an adequate statement of the potential impacts and litigation measures available if the Policy is adopted as proposed.

TC Contractors recognize that the CVP's M&I contractors have every right to expect the Project to make a reasonable effort to assure the reliability of their water supplies. Irrigation Contractors have the same expectations. The TC Contractors would strongly support a Policy that protects public health and safety, and that provides the maximum possible water deliveries to the CVP's M&I contractors without adversely impacting deliveries to the Project's irrigation water users. A preferential policy that appears to affect the TC Contractors as does the Policy is inappropriate.

Bureau of Reclamation – Alisha Sterud
November 28, 2001
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Thank you for considering these comments.

Sincerely yours,

J. Mark Atlas
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JMA/skm

cc: Tehama-Colusa and Corning Canal Contractors
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